

REMARKS

Claim Objections

The Action objects to claim 14 for being an improper dependent claim-a claim cannot depend from itself. In the amendments above claim 14 has been amended to depend from claim 13. Applicants, therefore, respectfully request withdrawal of the objection as to claim 14.

Additionally, Applicant has amended claims 16 and 35 to remove typographical errors. Specifically, “request to for information” has been amended to read “request for information.”

Drawings

The Action objects to the drawing as failing to comply with 37 CFR 1.84(p)(5) because they do not include a reference signal mentioned in the description, specifically, “wireless communication device 13 (specification-line 1, page 8) is not shown in the figure 3.” After examining the specification it appears that the examiner means “wireless communication device 316.” The applicant shall treat the objection as such and has included a replacement sheet for figure 3 that includes a wireless communication device 316.

Claim Rejections Under §102:

The action, page 3, rejects claims 1-6, 10-22, 24-31, 36-40, and 44-47 under 35 U.S.C. 102(e) as being anticipated by Horwitz (U.S. 6,496,804). Applicant respectfully traverses this rejection because Horwitz does not teach “determining a location of a vehicle using RFID tag information received from both a first and second RFID interrogator.” In order to sustain a rejection under 35 U.S.C. 102(e), the cited reference must teach each and every claim limitation. (See MPEP §2131). Moreover, “the identical invention must be shown in as complete detail as

contained in the . . . claim.” (See MPEP §2131, citing *Richardson v. Susuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1566 (Fed. Cir. 1990)). Horwitz cannot, therefore, anticipate claim 1, because Horwitz fails to teach each and every element of claim 1 for at least the reasons stated above.

Unlike the claimed invention, Horwitz discloses a single downward looking interrogator 114b configured to provide information that can be used to determine location (See Col. 10, lines 16-35). As noted in the present application using two RFID interrogators provides better location accuracy (See page 7, paragraphs 26-28). In fact, the Action admits that the second RFID interrogator is not for location purposes. Accordingly, Applicant respectfully requests withdrawal of the rejection as to claim 1 because Horwitz fails to teach, suggest, or disclose determining location using RFID information from a first and second RFID interrogator.

Claims 2-6, 10-12 depend from claim 1 and are allowable for at least the reasons discussed above with respect to claim 1. Applicants, therefore, respectfully request withdrawal of the rejection as to claims 2-6, 10-12.

Claim 13 is allowable for at least the reasons discussed above with respect to claim 1. Further, Horwitz does not teach “a distance between interrogators related to separation of location tags.” No relation between the distance of the two readers related to separation of location tags is shown in Horwitz. The Action indicates that the distance between interrogators 114a and 114b in Horwitz is related to the distance between tags 106. Applicant respectfully disagrees. Horwitz does not teach any relation between the location of the interrogators 114a and 114b other than that they are located on the same vehicle. Moreover, Horwitz contains no teaching that location of tags 106 impacts the separation of interrogators 114a and 114b, nor would it. As clearly explained in Horwitz, interrogators 114a and 114b are used for completely

unrelated purposes and the distance between the two interrogators has no impact on the operation of the two interrogators. Accordingly, applicant respectfully requests withdrawal of the rejection as to claim 13.

Claims 14-17 depend from claim 13 and are allowable for at least the reasons discussed above with respect to claim 13. Applicants, therefore, respectfully request withdrawal of the rejection as to claims 14-17.

Claim 18 is allowable for at least the reasons discussed above with respect to claim 1. As described above with respect to claim 1, claim 18 has been amended only for the purposes of clarification. Applicants, therefore, respectfully request withdrawal of the rejection as to claim 18.

Claims 19-22 and 24-29 depend from claim 18 and are allowable for at least the reasons discussed above with respect to claim 18. Applicants, therefore, respectfully request withdrawal of the rejection as to claims 19-22 and 24-29.

Claim 30 is allowable for at least the reasons discussed above with respect to claim 1. As described above with respect to claim 1, claim 30 has been amended only for the purposes of clarification. Applicants, therefore, respectfully request withdrawal of the rejection as to claim 30.

Additionally, claims 31, 36-40, and 44-47 depend from claim 30 and are allowable for at least the reasons discussed above with respect to claim 30. Applicants, therefore, respectfully request withdrawal of the rejection as to claims 31, 36-40, and 44-47.

Claim Rejections Under §103:

Page 13 of the Action rejects claims 7-9, 23, 32-36 and 41-43 under 35 U.S.C. § 103(a) as being unpatentable over Horwitz (U.S. Patent 6,496,804). Applicant respectfully traverses the rejection as to claims 7-9, 23, 32-36 and 41-43, because neither Horwitz, alone or in combination with the “ordinary skill in the art” teach each and every element of the claims 7-9, 23, 32-36, and 41-43. Specifically, Horwitz fails to teach, suggest, or disclose “determining a location of a vehicle using RFID tag information received from both a first and second RFID interrogator” as discussed above with respect to claim 1 and as the Action admits on page 3.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).” (See MPEP §706.02(j)).

In this instance, the reference used to reject claims 7-9, 23, 32-36 and 41-43 fail to meet all three of these requirements. First, the reference fails to teach each and every claim limitation. Claim 7-9, 23, 32-36 and 41-43 include the limitation of “determining a location of a vehicle using RFID tag information received from both a first and second RFID interrogator.” As discussed above with respect to claim 1 and as the Action admits on page 3 Horwitz fails to teach this limitation. Horwitz teaches determining location using received RFID tag information from a single RFID interrogator. Further, Horwitz teaches “receiving RFID tag information from a

second RFID interrogator (see page 3, paragraph 5 of the Action and Horwitz Fig. 4, 114a). As discussed above with respect to claim 1, the information from the second RFID interrogator is not used for location purposes.

Additionally, claims 7-9, 23, and 41-43 include the limitation: “determining a direction.” As the Action admits on page 14 Horwitz fails to teach this limitation. The Action attempts to make up for this on page 14, paragraph 4 by stating that “clearly one of ordinary skill in the art can easily determine a direction of the vehicle....based on the information received from both of the RFID interrogators.” As discussed above, only one RFID interrogator is used for location purposes in Horwitz, the second RFID tag is not used for location purposes. Therefore, since only one RFID interrogator is used for location purposes, using both RFID interrogators for direction would not be clear to one of ordinary skill in the art.

Further, when using a single RFID interrogator you cannot determine direction until the interrogator is moving and passes over at least two tags. By using two RFID interrogators direction can generally be determined more quickly and even using a single tag.

Second, the rejection must fail because the reference was improperly combined. As noted above, “[t]he teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).” See MPEP §706.02(j). The Action relies on Horwitz for teaching a locating system that is the same as the present application except that Horwitz does not teach direction of a vehicle. Applicant respectfully disagrees. Horwitz does not teach a system that uses two interrogators to provide information from tags mounted on the floor that can be used for locating. Accordingly, Horwitz does not teach a locating system that is the same as the present application. Further, Horwitz does not teach “a

direction of a vehicle based on the information received from both of the RFID interrogators,” since the second RFID interrogator is not used for location purposes.

Moreover, the Action fails to provide any motivation or likelihood of success for combining Horwitz with determining direction based on two RFID interrogators and thus, the references were improperly combined. The Action, in fact, makes no attempt to provide a likelihood of success and, therefore, combining the two references was improper on that basis alone.

The Action attempts to provide a motivation to combine by stating that “clearly one of ordinary skill in the art can easily determine a direction of a vehicle, wherein real time tracing of the vehicle track on the matrix of Horwitz (fig. 5) suggests direction associated with Δx and Δy over the associated matrix coordinate-x and y, based on information received from both of the RFID interrogators.” The Action at best appears to be base this rejection on Horwitz, figure 5 and improper hindsight since nothing in figure 5 indicates the use of two RFID interrogators.

Each finding of fact upon which a conclusion of obviousness is based must be supported by substantial evidence and, in particular the conclusion that the prior art suggests or motivates the modification of a prior art reference must be based on findings supported by substantial evidence. *In re Kotzab*, 217 F. 3d 1365, 1370-71 (Fed. Cir. 2000). Hence, a *prima facie* case of obviousness cannot be made out by merely asserting that modifications to the prior art are “well within the ordinary skill of the art.” *Ex Parte Leavengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). Accordingly, Applicant asserts that the Action fails to make out a *prima facie* case of obviousness, because it fails to provide the substantial evidence in support of the conclusion that *the cited reference* teaches a motivation to modify the teachings of Horwitz.

Because the Action fails to make a *prima facie* case of obviousness, Applicant respectfully request that the rejection be withdrawn as to claims 7, 23, 32, and 41. Claims 8-9,

31-36, and 42-43 depend from either claim 7, 32, or 41 and are allowable for at least the reasons discussed above with respect to claims 7, 32, or 41. Applicants, therefore, respectfully request withdrawal of the rejection as to claims 7-9, 23, 32-36, 41-43.


CONCLUSION

Based on the above amendments and remarks, Applicant believes that the claims are in condition for allowance and such is respectfully requested. A check in the amount of \$510 is enclosed for the fee required for the Three Month Petition for Extension of Time. No additional fees are deemed to be due, however, the Commissioner is hereby authorized to charge any additional fee and/or credit any overpayment to Deposit Account Number 13-0480.

Respectfully submitted,

Dated: August 3, 2005

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